

# A CITIZEN GUIDE TO THE ROLE OF THE WISCONSIN ENVIRONMENTAL POLICY ACT IN DNR DECISION-MAKING

## **INTRODUCTION**

The Department of Natural Resources (DNR) has prepared this brief "Guide" to provide interested citizens such as yourself an overview of the role the Wisconsin Environmental Policy Act (WEPA) plays in agency decision-making. We hope this information will help you participate more effectively in Department decision-making activities.

We begin with a general explanation of what the Environmental Policy Act is and who it applies to. We continue with a more specific discussion of the role of the law in DNR decision-making. We close with some specific suggestions on how to effectively participate in a particular Department decision-making process.

## **WHAT IS THE WISCONSIN ENVIRONMENTAL POLICY ACT?**

The Wisconsin Environmental Policy Act is a state law designed to encourage environmentally sensitive decision-making by state agencies.

Signed into law in 1972, WEPA spells out the state's environmental policy and requires the DNR and other state agencies to consider the environmental effects of their actions to the extent possible under their other statutory authorities. It also establishes the principle that broad citizen participation should be part of environmental decision-making. WEPA imposes procedural and analytical responsibilities on the DNR and other agencies but does not provide authority to protect the environment.

WEPA applies only to the actions of state agencies. It does not apply to local governments or private parties unless their actions involve state agency regulation or funding.

WEPA requires the DNR and other state agencies to gather relevant environmental information and use it in their decision-making. Agencies must also look at appropriate alternatives to the particular course of action they are proposing. If the action is a "major action significantly affecting the quality of the human environment", the law requires agencies to consult with

other agencies about possible environmental impacts, prepare and circulate an environmental impact statement (EIS), and hold a public hearing.

The WEPA process has evolved substantially since its inception. Because WEPA lacks procedural guidance, much of the current process has been developed in response to various legal decisions. For example, environmental assessments (EA's) are a creation of the courts, having arisen out of a perceived need for agencies to document their decision's not to do EIS's. EA's are similar to EIS's in both content and process. They both describe the proposal and the affected environment and they both analyze the environmental impacts and possible alternatives. And, both EA's and EIS's are publicly noticed. The primary difference is the requirement for a formal administrative hearing on an EIS.

The Environmental Analysis and Review Program is responsible for overall coordination of WEPA implementation within DNR. The Department's procedures for implementing WEPA are described in detail in Chapter NR 150 of the Wisconsin Administrative Code.

A key part of NR 150 is the Action Type List. Here, all DNR actions are placed into one of four categories involving various levels of environmental analysis and public involvement. The DNR uses the Type List to determine the minimum review process appropriate for a particular proposed Department action.

**Persons interested in obtaining a copy of NR 150 may do so by calling 608-267-7536.**

### **WEPA AND DNR DECISION-MAKING**

In the course of implementing WEPA, the DNR has observed that citizens may not be aware of the wide variety of Department decision-making authorities. Some decisions, such as whether to issue a permit for an air pollution source, are very quantitative in nature and limited in scope. Other decisions, such as whether to buy and develop a new wildlife area, allow DNR to use a great deal of discretion. In addition, the role WEPA plays in these different kinds of decision-making circumstances may not have been clearly explained.

The following discussion addresses common public misunderstandings about the role of WEPA in DNR decision-making:

#### **Common Public Point of View:**

*The DNR regulates everything related to the environment and can decide to do whatever it wants*

#### **What the Law Says:**

The DNR has substantial authorities to regulate environmental pollution and alterations to

waterways. However, the standards the DNR can apply in exercising these authorities are defined in the various regulatory statutes and related Administrative Rules. For many DNR permit programs, these standards do not include social or economic concerns. Nor do these standards allow the Department to substitute an alternative to what is proposed. An important result of the lack of DNR discretion in making decisions on environmental permits is this:

**The Department does not have the legal authority to direct a project proponent to a particular site or to assure that the "best" site is selected for a project. This lack of authority applies to landfills, incinerators, shopping malls, residential developments, factories and most other types of human development.**

In simplest terms, the DNR has limited authority for deciding the appropriate use(s) of land. This responsibility, to the extent it has been established at all, resides with other units of government, typically local municipalities.

#### **Common Public Point of View:**

*Public opinion should be used in all DNR decision-making circumstances*

#### **What the Law Says:**

We agree, however, the law limits DNR's ability to factor public opinion into every decision it makes.

Many DNR decisions, particularly on regulatory matters, must, by law, be based entirely on a technical analysis of whether or not the proposed activity would meet the applicable standards established in the laws and Administrative Rules. In these decision-making circumstances, public opinion is not one of the factors that the DNR can consider.

In contrast to the situation with DNR regulatory decisions, non-technical public input is very important and relevant to many other types of Department decisions. These include decisions relating to development of Administrative Rules, fish and wildlife habitat and species management, recreation management, forestry and land acquisition.

#### **Common Public Point of View:**

*WEPA documents, and EIS's in particular, determine the outcome in DNR decision-making*

#### **What the Law Says:**

The public often seems to believe a particular problem would be solved if only the DNR would prepare an EIS. These "particular problems" are usually some type of unwanted project being proposed for the neighborhood - a landfill, a shopping mall, or an industrial facility, for example.

In reality, WEPA provides an informational process - EIS's (and EA's) disclose impacts and look at alternatives. They don't stop projects; they don't approve projects; they don't modify projects. They inform. The influence this informational function has on a Department decision is directly related to the amount of discretion DNR has in making that decision.

To quote from a recent court case, **"WEPA does not mandate particular results or particular decisions in individual cases but simply exists to ensure that adverse environmental effects of a particular project are identified and evaluated during the planning stages. The act does not prohibit unwise decisions, only uninformed ones."**

#### **Common Public Point of View:**

*Without an EIS, the DNR's environmental review is incomplete or inadequate*

#### **What the Law Says:**

This perception results in much unproductive debate and litigation. As indicated above, preparation of an EIS does not give the DNR any additional authority to deny or condition a permit. In many regulatory circumstances, an EIS would neither add anything of value to the DNR review taking place under the substantive environmental laws nor result in a different decision. In addition, for many situations potentially involving an EIS the DNR currently prepares an Environmental Assessment (EA). As discussed above, EA's are similar to EIS's in both content and process.

In the more than twenty years since WEPA became law, the DNR's experience has consistently reinforced the following conclusion:

**Involvement early in project development is the most effective way to stimulate environmentally sensitive planning and avoid or minimize adverse environmental effects. Preparing EA's or EIS's late in the project planning and design process is usually ineffective in achieving meaningful environmental protection.**

#### **Common Public Point of View:**

*Any DNR regulatory decision on a major project needs an EIS*

#### **What the Law Says:**

Oftentimes, the DNR has a minor regulatory involvement in a large, environmentally significant or controversial proposal. Recent examples include a cross-state pipeline and a large residential development.

These kinds of controversial proposals typically involve disagreements over the appropriate use

of land, concerns about social or economic impacts, or other issues for which DNR lacks authority. It makes little sense for the DNR to prepare an EIS in these situations when doing so would not stop the project or otherwise result in a different Department decision. Because many of the private and local governmental decisions affecting these projects have already been made, it is usually too late for the information which would be presented in the EIS to be used in making these critical decisions.

### **EFFECTIVE CITIZEN INVOLVEMENT IN DNR DECISION-MAKING**

After reading this far, you may be asking yourself, "How can I effectively participate in a DNR decision-making process?" An essential first step is gaining a basic understanding of all that is involved in the particular DNR decision-making process you are interested in, including how WEPA fits in. By spending time with this "Guide" you've already made a good start toward achieving that goal. But, there may well be more you will want to do. The DNR suggests you consider focusing your efforts on the following:

- Learn the criteria and standards associated with the DNR decision(s) of interest. It is very important to determine how public input will be considered (or not considered) in a decision. It is also essential to know the most effective time(s) in the process to provide your input.
- Determine whether a WEPA review (EA or EIS) would make a meaningful difference in the decision-making process. The key here is usually how much discretion DNR has to consider all of the potential impacts of a proposal as well as public opinion on the alternatives to the proposal.
- Determine whether other governmental entities (federal, state and local agencies), in addition to the DNR, will have an action related to the proposal in question, as is often the case. If other units of government are involved, you will want to become familiar with their decision-making processes and standards also.
- Address your concerns to the governmental body in the best position to deal with them. For example, many facility siting and related land use issues are primarily handled by a local municipality. Most environmental pollution issues such as proposed discharges to the air and water are the responsibility of DNR.
- Encourage your local municipalities to adopt ordinances that make use of the WEPA process, and your local officials to coordinate their decisions with those of the Department.

